

BOARD OF VETERINARY MEDICAL EXAMINERS

Minutes

Date: March 25, 2004

Time: 9:00 a.m., C.S.T.

Location: Big Tennessee Room
Ground Floor, Cordell Hull Building
425 Fifth Avenue North
Nashville, TN 37247-1010

Members Present: Jerry Wilhite, D.V.M, President
Samantha Petty, Consumer Member
Maryann Grell, L.V.M.T.
Thomas Edmonds, D.V.M.
Mary Welch, D.V.M.

Members Absent: Leland Davis, D.V.M.
Richard Buchanan, D.V.M.

Staff Present: Lisa Lampley, Board Director
Rita Buckner-Shelton, Board Administrator
Nicole Armstrong, Advisory Attorney
Robbie Bell, HRB Director
Jerry Kosten, Regulations Manager
Robert Taylor, D.V.M., Board Consultant/Inspector

A roll call vote was taken and upon determination of a quorum being present, the Board meeting was called to order by Dr. Wilhite at 9:03 a.m.

Approval of Minutes

After reviewing the minutes from the December 11, 2003 meeting, Dr. Welch motioned to approve the minutes as presented. Ms. Petty seconded the motion. The motion carried.

Conflict of Interest Policy

Ms. Nicole Armstrong, Advisory Attorney, reviewed the conflict of interest policy with the Board members.

Licensure Applicant Interview

Jeffrey N. Witwer, DVM

Dr. Witwer appeared before the Board for an interview pursuant to the Board's request. Dr. Witwer answered "yes" on the licensure application questions pertaining to disciplinary action in other states and pending legal actions. After questions and discussion, Dr. Welch made a motion to grant licensure to Dr. Witwer. Ms. Petty seconded the motion. The motion carried.

Lyssa M. Cloud, LVMT

Ms. Cloud appeared before the Board for an interview pursuant to the Board's request. Ms. Cloud received disciplinary action in another state. After review and discussion, a motion was made by Dr. Edmonds, seconded by Ms. Grell, to reinstate Ms. Cloud's license. The motion carried.

Compliance Report – Carson Hutchison, DVM

As per the terms of the Order ratified by the Board on April 11, 2002, Dr. Hutchison appeared before the Board for a progress report and to present proof of continuing education hours. Dr. Hutchison's probationary period will expire April 11, 2004.

Contested Case – Philip D. Ensminger, D.V.M.

Dr. Philip Ensminger, DVM, was present and was not represented by counsel. Ms. Ginger Marlowe, Assistant General Counsel, represented the State. The proceedings were presided over by Administrative Law Judge James A. Hornsby. Dr. Ensminger was charged with practicing on an expired license and practicing without a premise permit. Ms. Rita Buckner-Shelton, Board Administrator, testified that Dr. Ensminger's license expired on December 31, 1997 and that Dr. Ensminger had never been issued a premise permit. Ms. Alice Ford, Investigator for Health Related Boards, presented testimony regarding her investigation and interview of Dr. Ensminger. Dr. Ensminger testified on his own behalf and admitted to practicing without a license and practicing in a facility without a premise permit.

Upon deliberation, the Board found the Respondent guilty of practicing veterinary medicine on a lapsed license and practicing in a facility without a premise permit. Dr. Welch made a motion to place the license on probation for three years with annual appearances before the Board to provide proof of continuing education hours. The Respondent was given until Spring, 2005 to obtain and present proof of completion of any deficit continuing education hours since calendar year 1996. Total civil penalties in the amount of \$7,750.00 were assessed plus costs of the proceedings. Dr. Edmonds seconded the motion. The motion carried.

Contested Case – Mary A. Ensminger, D.V.M.

Dr. Mary Ensminger, DVM, was present and was not represented by counsel. Ms. Ginger Marlowe, Assistant General Counsel, represented the State. The proceedings were

presided over by Administrative Law Judge James A. Hornsby. Dr. Ensminger was charged with practicing on an expired license and practicing without a premise permit. Ms. Rita Buckner-Shelton, Board Administrator, testified that Dr. Ensminger's license expired on September 30, 1997 and that Dr. Ensminger had never been issued a premise permit. Dr. Ensminger testified on her own behalf and admitted to practicing without a license and practicing in a facility without a premise permit.

Upon deliberation, the Board found the Respondent guilty of practicing veterinary medicine on a lapsed license and practicing in a facility without a premise permit. Dr. Welch made a motion to place the license on probation for three years with annual appearances before the Board to provide proof of continuing education hours. The Respondent was given until Spring, 2005 to obtain and present proof of completion of any deficit continuing education hours since calendar year 1996. Total civil penalties in the amount of \$8,050.00 were assessed plus costs of the proceedings. Ms. Petty seconded the motion. The motion carried.

Contested Case – William M. Hezel, D.V.M.

Dr. William Hezel, DVM, was present and was not represented by counsel. Ms. Ginger Marlowe, Assistant General Counsel, represented the State. The proceedings were presided over by Administrative Law Judge James A. Hornsby. Dr. Hezel was charged with practicing on an expired license from December 1, 2002 until present and practicing in a facility without a premise permit from July 1, 2000 until May 7, 2002. Ms. Rita Buckner-Shelton, Board Administrator, testified that Dr. Hezel's license expired on November 30, 2002 and was reinstated on February 11, 2004. She further testified that the Respondent was sent notification on May 26, 2000 that a premise permit application had not been filed. An incomplete premise permit application was received on September 25, 2000. The application was completed in February, 2002 and the Respondent's facility was inspected on April 22, 2002. A premise permit was issued on May 7, 2002. Ms. Joyce Hudspeth, Investigator for Health Related Boards, presented testimony of her investigation and interview of Dr. Hezel. Dr. Hezel testified on his own behalf and admitted to practicing on an expired license and practicing in a facility without a premise permit.

Upon deliberation, the Board found the Respondent guilty of practicing veterinary medicine on a lapsed license and practicing in a facility without a premise permit. Dr. Welch made a motion to assess total civil penalties in the amount of \$1,100.00 plus costs of the proceedings. Ms. Grell seconded the motion. The motion carried with Dr. Edmonds opposed.

Agreed Order – Mark A. Roberts, D.V.M.

Dr. Mark Roberts, DVM, did not appear before the Board and was not represented by counsel. Ms. Ginger Marlowe, Assistant General Counsel, represented the State. Dr. Roberts was found guilty by jury verdict of six counts of Wire Fraud and five counts of False Statements in the U.S. District Court for the Central District of California. The Respondent has appealed these convictions and his appeal is currently pending. Ms. Marlowe presented to the Board a copy of an Agreed Order which places Dr. Roberts' license on suspension until either a resolution is

rendered regarding his appeal or time has expired on all appeals of the convictions or Respondent personally appears before the Board. The Respondent shall submit a report to the Board every six months regarding the status of his appeal. Upon resolution or exhaustion of time for all appeals or upon Respondent's request for a hearing in this matter, he will personally appear before the Board in order for the Board to take such further or additional action as deemed appropriate. Dr. Welch made a motion, seconded by Ms. Grell, to accept the order. The motion carried.

Pave Presentation – Dr. Georgie Ludwig

At the Board's request, Dr. Georgie Ludwig, DVM, provided a slideshow presentation on the Program for the Assessment of Veterinary Education Equivalence (Pave) for foreign graduates. This program was developed by the American Association of Veterinary State Boards (AAVSB). Information regarding the history of Pave, statistics of Pave, and the basic elements of Pave were presented. Following the presentation, Dr. Ludwig answered questions and discussed the potential for a single foreign graduate program. The Board thanked Dr. Ludwig for her appearance/presentation.

TNPAP Presentation – Leanne C. Busby, DSN, RNC

Ms. Busby, State Director, Tennessee Professional Assistance Program (TNPAP), appeared before the Board to present a proposal for professional support services for veterinarians, veterinary medical technicians, and euthanasia technicians in violation of their Practice Act due to addictions and related psychological disorders. TNPAP assists in the rehabilitation of impaired health care professionals by providing consultation, prevention, referral, and monitoring services to facilitate a safe return to practice. Ms. Busby proposed to contract with the Board for an annual fee in the amount of \$16,000.00. After discussion, the Board requested that Ms. Busby prepare a proposal based on a per client/referral fee. The Board thanked Ms. Busby for her appearance/presentation.

Petition for Declaratory Order

Ms. Nicole Armstrong, Advisory Attorney, presented a request from Smoky Mountain Cattle Consulting to grant a hearing for the consideration of a petition for a Declaratory Order regarding statutes/rules pertaining to accepted livestock management. Dr. Edmonds made a motion, seconded by Dr. Welch, to grant a hearing for the petition. The motion carried. The hearing will take place at the August 26-27, 2004 meeting.

Discussion - AAVSB Conference

A discussion was held concerning the upcoming American Association of Veterinary State Boards (AAVSB) Conference to be held September 17 – 19, 2004 in Kansas City, MO. A request for approval will be submitted for Dr. Wilhite, Ms. Grell, and Ms. Lampley.

Investigations and Disciplinary Report

Ms. Lea Phelps, Disciplinary Coordinator, reviewed the reports with the Board. There are currently nineteen (19) open complaints in the Office of Investigations. The disciplinary report indicated that five (5) licensees are currently being monitored for compliance with Board orders. A report of all disciplinary action taken by the Board was also included.

Office of General Counsel (OGC) Report

Ms. Nicole Armstrong, Advisory Attorney, informed the Board there are currently two sets of rules under review at the Office of the Attorney General. Rules regarding the premise permit fee recently became effective on March 21, 2004. The Office of General Counsel currently has seventeen (17) open files pertaining to the Tennessee Board of Veterinary Medical Examiners. Of that number, sixteen (16) files pertain to veterinarians and one (1) pertains to a veterinary medical technician.

Legislation Report

Ms. Nicole Armstrong reviewed the following pending legislation:

SB2666 – Allows for temporary licensure for foreign graduates meeting specified criteria.

SB3453 – Appoints the State Veterinarian as a non-voting, ex-officio member of the Board of Veterinary Medical Examiners.

HB3139 – Exempts veterinarians from the Controlled Substances Monitoring Act.

SB2954 – Allows a licensed veterinarian to lawfully dispense an appropriate Schedule III controlled substance to the animal control division within any local law enforcement agency solely for purpose of tranquilizing animals as necessary to prevent immediate peril to human life or property.

SB2111 – Authorizes health related boards to conduct criminal background checks on applicants for licensure or certification.

HB3443 – Decreases the threshold amount for reporting malpractice judgments or settlements on the practitioner profile to \$5,000.00.

Rules Status Report

Mr. Jerry Kosten, Regulations Manager, reported that a rulemaking hearing was held on December 23, 2003 regarding disciplinary proceedings. No comments were received at the rulemaking hearing. After review, a motion was made by Dr. Edmonds, seconded by Dr. Welch, to ratify the proposed rule change. The motion carried.

Mr. Kosten reported that a rulemaking hearing was held on March 1, 2004 regarding the practice of veterinary medicine from unrecognized veterinary facilities. No comments were received at the rulemaking hearing. After review, a motion was made by Ms. Grell, seconded by Dr. Welch, to ratify the proposed rule change. The motion carried.

Mr. Kosten reviewed proposed rule changes/additions regarding prerequisites to prescribing. At a recent meeting of the Government Operations Committee concerns were voiced regarding the existing rules. This proposed rule change clarifies when a veterinarian, pursuant to appropriate protocols or veterinary orders, may prescribe or dispense drugs. After review and discussion, Ms. Petty made a motion to authorize a rulemaking hearing. Dr. Welch seconded the motion. The motion carried. A hearing is scheduled to take place on June 9, 2004. Notices of rulemaking hearings are posted on the Internet and may be accessed via the Department of Health's home page.

Inspection Report

Dr. Robert Taylor, DVM, presented and reviewed the inspection report. A total of ninety-nine (99) inspections were conducted during the period of December, 2003 – February, 2004.

Director's Report

The following number of active licensees as of December 31, 2003 was reported:

Veterinarians:	1,551
Veterinary Medical Technicians:	282
Veterinary Facilities:	525
Certified Animal Euthanasia Technicians:	107
Certified Animal Control Agencies:	37

The Veterinary Technician National Exam (VTNE) was given on January 16, 2004 to five (5) candidates. Three received a passing score. Appreciation was expressed to the Tennessee Veterinary Medical Association (TVMA) for the invitation and space provided at the recent Music City Veterinary Conference held March 5 – 6, 2004 in Franklin, TN. It was noted that our new toll-free telephone number of 1-800-778-4123 became effective on January 9, 2004 with the local number unchanged. A copy of the Customer Survey currently being distributed and displayed on our website was provided to Board members.

Financial Report

A copy of the last financial report was available for review. A new report will be mailed to all Board members within the next few weeks.

Continuing Education Course Approval

The following requests for approval of continuing education hours were received:

A request from **AgriLabs** for approval of four (4) continuing education hours for a seminar on “Bovine Virus Diarrhea” to be held June 2, 2004.

A request from **Gail S. Brawner, DVM**, for approval of continuing education hours obtained through correspondence courses and internet interactive courses due to medical considerations.

A request from **R. P. Cooke, DVM**, requesting approval for ten (10) hours of continuing education credit for a two-day conference entitled “Grazing for Profit” provided by the **Maury County Soil Conservation District** on February 26-27, 2004. The committee noted that a maximum of five (5) hours credit was allowed for fields other than the medical and surgical care of animals.

A request from **Heather Scott, LVMT**, requesting approval of twelve (12) hours of continuing education credit for a home-study course entitled “**Effective Pet Massage for Dogs 1**”. The committee noted that a maximum of four (4) hours credit was allowed for multi-media courses.

A request from **Dan Woodard, DVM**, requesting approval of courses taken at **Tennessee Technological University** as meeting board requirements for continuing education.

A request from **Bayer HealthCare** requesting approval of two (2) hours of continuing education credit for a presentation entitled “Intestinal Parasites of Dogs and Cats: The Zoonotic Impact” to be held on April 15, 2004.

A request from **Fort Dodge Animal Health** requesting approval of three (3) hours of continuing education credit for a seminar entitled “ProHeart 6: A Major Opportunity for Unsurpassed Growth” by **Dr. Ronald Whitford, DVM**, to be held on March 4, 2004, at the Cool Springs Marriott in Franklin, TN.

A motion to approve all courses with the noted maximum number of hours allowed was made by Dr. Welch and seconded by Ms. Petty. The motion carried.

File Review

The Board reviewed an application for licensure as a certified animal euthanasia technician submitted by **Joel K. Spencer**. Mr. Spencer answered “yes” to conviction of a felony or misdemeanor other than a minor traffic offense. After review and discussion, a motion to approve the application was made and seconded. The motion carried.

The Board reviewed an application for licensure by reciprocity submitted by **Elizabeth Thompson, DVM**. The Board declined to accept continuing education hours submitted for calendar year 1999. Dr. Thompson is required to obtain and submit proof of completion of twenty (20) hours of continuing education before licensure may be granted.

The Board reviewed a reinstatement application submitted by **Frank Harris, Jr., DVM**. Dr. Harris answered “yes” to conviction of a felony or misdemeanor other than a minor traffic

offense and “yes” to disciplinary action against his license. After review and discussion, a motion to approve the reinstatement application was made and seconded. The motion carried.

The Board reviewed a reinstatement application submitted by **Merlin E. Shuck, DVM**. Dr. Shuck answered “yes” to conviction of a felony or misdemeanor other than a minor traffic offense. After review and discussion, a motion to approve the reinstatement application was made and seconded. The motion carried.

File Review/Ratification

Upon review, the Board moved to ratify all newly licensed/certified or reinstated veterinarians, veterinary medical technicians, veterinary facilities, certified animal euthanasia technicians, and certified animal control agencies.

Correspondence

The Board reviewed all correspondence and requested that appropriate notification be given by Ms. Nicole Armstrong, Advisory Attorney, of any action taken or any comments made.

ECFVG Survey

A survey is being conducted of veterinary state regulatory boards by the American Veterinary Medical Association (AVMA) Educational Commission for Foreign Veterinary Graduates (ECFVG) regarding adding board certification in an AVMA-recognized veterinary specialty organization as an option for completing Step 4 of the ECFVG certification program. After discussion, the Board was not in favor of this change. It was felt that a broad-based or general education should be obtained before training in a specialty area. This will be relayed to the AVMA Educational Commission for Foreign Veterinary Graduates.

Adjournment

There being no further business to discuss, Ms. Petty made a motion, seconded by Ms. Grell, to adjourn. The motion carried and the meeting was adjourned at 5:15 p.m.

Mary Welch, D.V.M., Secretary

Date

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